resulting therefrom, the plaintiff appeared to be in normal health. Taking the age of 55 as the retirement age and allowing 1/3 from this for contingencies of life, I would take 12 years as the years of purchase. This would yield a sum of $21,271.80. I would award a round figure of $21,500.

As stated earlier, the sum of $190, being costs of medical report and transport charges, has been agreed to and a sum of $5,670 is to be deducted from the general damages awarded.

In the result, there will be judgment for the plaintiff against the defendant in the sum of $50,020 made up as follows:

(i) Damages for pain and suffering and loss of amenities	$20,000
(ii) Loss of earnings	14,000
(iii) Loss of earning capacity	21,500
	$55,500
Add: Charges for transport and medical report	190
	$55,690
Less: Amount agreed to be deducted	5,670
	$50,020

No interest may be awarded on damages for loss of earning capacity — *Jamil bin Harun* v *Yang Kamsiah & Anor*;[12] *Joyce* v *Yeomans*;[13] *Jefford* v *Gee*;[14] *Tan Lian Heng* v *Kilang Papan Aman Sdn Bhd & Anor*.[15] There shall be interest on:

(a) $20,000 (general damages) at 8% pa from 14 May 1984 (date of service of the writ) to the date of judgment hereof;
(b) $14,190 (special damages) at 4% pa from 7 September 1982 (date of accident) to the date of judgment hereof; and
(c) interest on the judgment sum of $50,020 at 8% pa from the date of judgment hereof until payment.

I gave thought as to whether the sum of $5,670 to be deducted ought to be taken off for the purpose of awarding interest but decided not to do so since there was no agreement in this respect between the parties. Moreover, the reasons for the deduction and particulars, if any, (eg dates of advancements if applicable) were not made known to me. There shall also be an order that costs of the action be paid by the defendant to the plaintiff. In the absence of an agreement, such costs may be taxed.

Order accordingly.

Solicitors: *Yong & Wong*; *Lau & Co.*

Reported by *Mathavan Devadas*

Yew Leek Enterprise Sdn Bhd v Foong Engineering & Constructions Works Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D1-24-193-87
VC GEORGE J
15 MARCH 1989

Civil Procedure — Writ — Service of — Service at principal office instead of registered office — Whether service bad — Whether judgment irregular — Rules of the High Court 1980, O 62 r 4(1) — Companies Act 1965, s 350

Civil Procedure — Judgment in default of appearance — Setting aside — Inordinate delay in filing application — Defence on merit

The plaintiffs obtained judgment in default of appearance against the defendants which was perfected on 30 July 1987. The defendants were notified that the judgment had been entered but were not supplied with a copy of the judgment. On 3 September 1987, they made a search of the court file, and on 5 September 1987, applied to have the default judgment set aside. The defendants contended that the writ was not served at their registered office and the service must be set aside.

Held, dismissing the defendants' application:

(1) The period of delay in filing the application has to be assessed from the date the defendants knew or ought to have known of the default judgment having been entered. In this case, there was no inordinate delay between the defendants obtaining confirmation of judgment having been entered and the filing of the application.

(2) The defendants have not disclosed any plausible defence on merit. There was no evidence produced in support of their contention that they have a defence and counterclaim in that some of the goods supplied by the plaintiffs were defective.

(3) Order 62 r 4(1) of the Rules of the High Court 1980 provides three alternative methods of effecting service of a writ on a corporation. One is by sending a copy by registered post addressed to the corporation at the office, or if there are more than one office, at the principal office.

(4) Service of the writ can be effected at an office of a company which may not be its registered office. In this case, the writ was duly served at the only known office of the defendant company (other than its registered office), which office appears to be the principal place of business of the defendant.

Case referred to

1 *PT Pelajaran Nasional Indonesia* v *Joo Seang & Co Ltd* [1958] MLJ 113 (refd)

Legislation referred to

Companies Act 1965 s 350
Companies Ordinance 1948 s 319
Rules of the High Court 1980 O 62 r 4(1)

TY Tong for the plaintiffs.
CK Tan for the defendants.

Cur Adv Vult

VC George J: The writ in this case was served by sending a copy of it by registered post addressed to the defendant corporation at its office, namely, lot 1605, Batu 3, Kg Jawa, Sg Kandis, Klang. It is not disputed that the writ was received at that office and was kept in the drawer of the desk of one of the general managers of the defendants. The stamp on the original copy of the letter which accompanied the writ suggests that the writ was received on 18 April 1987. The defendants did nothing about the writ and on 26 May, the plaintiffs filed the requisite affidavit of service and sought a judgment in default of appearance. The learned senior assistant registrar issued a certificate of non-appearance to the writ on 16 May 1987 and judgment in default of appearance dated 16 May 1987 was granted in favour of the plaintiffs, which judgment dated 16 May 1987 was perfected on 30 July 1987. After the judgment was perfected, the defendants were notified that the judgment had been entered. The defendants had asked for a copy of the judgment. This apparently was not supplied. Accordingly, on 3 September 1987, the defendants' solicitors had to and made a search of the court file and upon obtaining confirmation of the fact that judgment had been entered, on 5 September 1987, the application to have the default judgment set aside was filed.

For the plaintiffs, it was contended that there was inordinate delay on the part of the defendants in filing the application. The period of delay has to be assessed from the date defendants knew or ought to have known of default judgment having been entered. In all the circumstances of this case, I am of the opinion that there was no inordinate delay between the defendants obtaining confirmation that default judgment had been entered and the filing of the application.

The plaintiffs also contended that the defendants have not disclosed any plausible defence on merit. I agree. The claim was for goods sold and delivered. In support of their contention that they have a defence and counterclaim, the defendants say that some of the goods purchased from the plaintiffs and resold or supplied to the defendants' customers were defective. The value of the counterclaim is said to be in the region of some $380,000. However, the only evidence of complaint made by the defendants to the plaintiffs of defective material prior to the application to set aside is one letter that refers to three worm screws valued at some $2,400 in respect of which in any event it would appear that the plaintiffs had given the defendants a credit note. It seems to me implausible that the defendants have a bona fide complaint in that the defendants who had taken the trouble to write and make a claim for the defective worm screws worth $2,400 have not made any complaint prior to being sued in respect of the rest of the items they now complain about. Further, the letters produced purported to have been received from the customers of the defendants do not suggest that the items complained of are items supplied by the plaintiffs. Accordingly, unless the judgment was an irregular judgment, the appeal should fail.

Counsel for the defendants relies on the first sentence of the last paragraph on p 849 of *Mallal's Supreme Court Practice* (2nd Ed): 'service at any office of the company other than the registered office is bad and must be set aside'. The registered office of the defendant company is at an address at Jalan Bukit Nanas, Klang. Service of the writ was not effected at that office but at what has been stated by the plaintiffs to be (and not specifically denied by the defendants) the principal office of the defendants. That the defendants had their factory there does not necessarily make it any the less its principal office.

Now, that sentence in *Mallal's Supreme Court Practice* appears to have been inspired by the judgment of Rigby J in *PT Pelajaran Nasional Indonesia* v *Joo Seang & Co Ltd.*[1] There, the requirements for service of process on a company was provided by s 319 of the then prevailing Companies Ordinance 1948 (the predecessor to the Companies Act 1965) which provided that service had to be effected at the registered office of the company. Section 350 of the Companies Act 1965 has a similar provision. However, we now also have O 62 r 4(1) of the Rules of High Court 1980 which provides three alternative methods of effecting service of a writ on a corporation, one of which is for service to be effected by sending a copy of the writ by registered post addressed to the corporation 'at the office or, if there be more offices than one, at the principal office of the corporation'. Accordingly, that sentence in *Mallal* does not reflect the position after the coming into force of the Rules of High Court 1980. Service of the writ can be effected at an office of a company which may not be its registered office. No doubt a prudent solicitor will not take the risk of attempting to serve a writ at what he understands to be the principal office of the defendant corporation because whether it is the principal office or not could be the subject of dispute. But where in fact service is effected in the manner prescribed by the rule at the office and if there be more than one office at the principal office of the corporation, then such service is good service even though the principal office is not the registered office. The rule is consistent with a common feature of commercial practice in this country that the registered office of a corporation may be the office of a solicitor, an accountant or a professional company secretary while the principal office would out of necessity be elsewhere.

In my judgment, on the facts of this case, the writ was duly served at the only known office of the defendant company (other than its registered office) which office appears to be the principal place of business of the defendant corporation. Such service is good service and accord-

ingly the default judgment was a regular judgment. It follows that since the defendants had not been able to demonstrate a defence of merits, the appeal has to be and is allowed. The default judgment of 16 May 1987 has to be and is restored. The defendants will pay the costs of the summons-in-chambers encl (11) and of this appeal encl (14). All costs thrown away in respect of execution proceedings that had been initiated will also be paid by the defendants.

Application dismissed.

Solicitors: *Tong, Leonard Foo & Associates; CK Tan & Co.*

Reported by *Zarinah Marican*